

PROPOSED TEXT

Add new Article 1 to Title 8, Division 3, Chapter 1, Subchapter 9, [Title 8, Division 3, Chapter 1, Subchapter 9 and Section 32998 adopted by Board on December 13, 2012; was part of a final rulemaking file approved by OAL, effective July 1, 2013], as follows:

Article 1. Services

Add new Article 2 to Title 8, Division 3, Chapter 1, Subchapter 9, and add new sections 32999, 33000, 33001, 33002, 33003, 33004, 33005, 33006, 33007, 33008, 33009, 33010, 33011, 33012, 33013, as follows:

Article 2. Elections

32999. Elections.

(a) The provisions of this Article are applicable whenever SMCS conducts representation and agency shop elections pursuant to the local rules of an MMBA, Trial Court Act or Court Interpreter Act employer.

(b) SMCS shall conduct such elections only pursuant to a Consent Election Agreement entered into by all parties and SMCS. The term “Consent Election Agreement” means either an agreement by the parties as to the time, place and manner of an election, or an agreement by the parties that authorizes the election supervisor assigned by SMCS to determine the time, place and manner of the election.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33000. Ballots.

(a) All elections shall be conducted by secret ballot under the supervision of SMCS.

(b) Ballots shall be prepared under the supervision of SMCS. The order of voting choices and the wording of each ballot entry shall be determined by SMCS in the absence of an agreement by the parties.

(c) Except in the case of a runoff election, the ballot entry of “No Organization” or “No Representation” shall appear on each ballot in a representation election.

(d) At any time prior to issuance of the notice of election (pursuant to section 33003), an employee organization may file a request with SMCS to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. Service and proof of service of the request pursuant to Section 32140 are required.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(a) and (c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33001. Parties.

“Parties” means the MMBA, Trial Court Act, or Court Interpreter Act employer, the employee organization which is the exclusive representative of employees in the voting unit, any employee organization eligible to appear on the ballot in a representation election, or any group of employees which has filed a valid petition pursuant to local rules of the employer.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3501, 71601, and 71801 Government Code.

33002. Stay of Election.

(a) Any party to an SMCS-conducted election may request that the Board stay the election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice.

(b) A request for a stay of an election shall be filed with the appropriate regional office, in accordance with Sections 32075 and 32122. Service and proof of service pursuant to Section 32140 are required.

(c) Any determination to stay an election made by the Board pursuant to this section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 3 of these regulations.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33003. Notice of Election.

SMCS shall provide a notice of election to the parties. The notice shall contain a sample ballot, a description of the voting unit, and information regarding the balloting process. Unless otherwise agreed by the parties, the employer shall post such notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the described unit are employed. The posting shall be accomplished by the date specified in the Consent Election Agreement. The notice shall remain posted through the final day for casting ballots.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33004. List of Voters.

(a) At a date established by the Consent Election Agreement, the employer shall submit to the election supervisor assigned by SMCS a list of names of all employees included in the voting unit as of the cutoff date for voter eligibility. Unless otherwise directed by SMCS, the voter list for an on-site election shall be in alphabetical order by assigned polling site and shall include the job title or classification, work location and home address of each eligible voter. Unless otherwise directed by SMCS, the voter list for a mailed ballot election shall be in alphabetical order and include the job title or classification and home address of each eligible voter, and shall be accompanied by two sets of name and home address labels for each eligible voter. The election supervisor may require that the voter list be submitted in an electronic format.

(b) The list of eligible voters which contains a mailing address for each eligible voter shall be concurrently served by the employer on each other party to the election. For purposes of this subsection, mailing address means the home address of each eligible voter, except in the case where the release of the home address of the employee is prohibited by law.

(c) Any party which receives the mailing addresses of eligible voters pursuant to this section shall keep these addresses confidential and shall neither distribute them to any other organization or individual nor utilize them for any other purpose.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33005. Voter Eligibility.

Unless otherwise agreed by the parties, to be eligible to vote in an election, employees must be employed in the voting unit as of the cutoff date for voter eligibility, and still employed on the date they cast their ballots in the election. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. Mailed ballots may be utilized to maximize the opportunity of such voters to cast their ballots.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33006. Challenges.

(a) In an on-site election, an authorized observer of any party to the election may challenge, for good cause, the eligibility of a voter. A person so challenged shall be permitted to cast a challenged ballot.

(b) In a mailed ballot election, an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Such challenges shall be made prior to the opening of ballot envelopes.

(c) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved in accordance with Section 33008, unless the Consent Election Agreement provides otherwise.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33007. Tally of Ballots.

(a) Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots.

(b) At the conclusion of the counting of ballots, SMCS shall serve a tally of the ballots on each party.

(c) Unless otherwise authorized by statute, a majority of the valid votes cast shall determine the outcome of the election.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(a) and (c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33008. Resolution of Challenges.

When the tally of ballots discloses that challenged ballots are sufficient in number to affect the outcome of the election, unless the Consent Election Agreement provides for an alternative procedure, the Board shall conduct an investigation and, where appropriate, conduct a hearing or take such other action as deemed necessary to determine the eligibility of the challenged voters. Any determination made by a Board agent pursuant to this Section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of these regulations, as appropriate.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33009. Objections.

(a) Within 10 days following the service of the tally of ballots, any party to the election may file with the Board, at the appropriate regional office, objections to the conduct of the election. Any objections must be filed within the 10-day time period whether or not a runoff election is necessary or challenged ballots are sufficient in number to affect the results of the election.

(b) Service and proof of service of the objections pursuant to Section 32140 are required.

(c) Objections shall be entertained by the Board only on the following grounds:

(1) The conduct complained of interfered with the employees' right to freely choose a representative, or

(2) Serious irregularity in the conduct of the election.

(d) The statement of the objections must contain specific facts which, if true, would establish that the election result should be set aside, and must also describe with specificity how the alleged facts constitute objectionable conduct within the meaning of subsection (c) above.

(e) No party may allege as grounds for setting aside an election its own conduct or the conduct of its agents.

(f) At the direction of the Board, facts alleged as supportive of the election conduct objected to shall be supported by declarations. Such declarations must be within the personal knowledge of the declarant, or must otherwise be admissible in a representation hearing pursuant to Section 32175. The declarations shall specify the details of each occurrence; identify the person(s) alleged to have engaged in the allegedly objectionable conduct; state their relationship to the parties; state where and when the allegedly objectionable conduct occurred; and give a detailed description of the allegedly objectionable conduct. All declarations shall state the date and place of execution and shall be signed by the declarant and certified by him or her to be true under penalty of perjury.

(g) The Board shall dismiss objections that fail to satisfy the requirements of subsections (a) through (d). The objecting party may appeal the dismissal to the Board itself in accordance with Chapter 1, Subchapter 4, Article 3 of these regulations.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33010. Powers and Duties of Board Agent Concerning Objections.

Concerning objections, a Board agent has the power to:

(a) Direct any party to submit evidence through declarations or documents;

(b) Order the inspection of documents by Board agents or the parties;

(c) Direct any party to submit an offer of proof;

(d) Obtain declarations from witnesses based on personal knowledge;

(e) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues;

(f) Dismiss any objections which, after investigation, do not warrant setting aside the election. Any such dismissal is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.

(g) Issue a written determination setting aside the election when, after investigation, it appears that such action is warranted, and that no material factual disputes exist. Such determination shall be in writing and served on the parties. Any such determination is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.

(h) Schedule a hearing when substantial and material factual disputes exist. Any hearing shall be limited to the issues set forth in the notice of hearing.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33011. Withdrawal of Objections.

Any party may withdraw its objections to an election prior to a final decision by the Board.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33012. Hearings on Objections and Challenges.

Objections to the conduct of an election which have not been dismissed pursuant to Section 33009(g) or 33010(f), or unresolved challenged ballots sufficient in number to affect the outcome of the election, may be resolved through the hearing procedures described in Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.

33013. Exception to Decision on Objections or Challenges.

Exceptions to a Board agent's proposed decision on objections to the conduct of the election or challenged ballots may be taken in accordance with the procedures set forth in Chapter 1, Subchapter 4, Article 2 (commencing with Section 32300) of these regulations.

Authority cited: 3509(a), 3541.3(g) and (n), 3600, 3603(a), 71639.1(b), 71825(b) and 71801, Government Code. Reference: Sections 3502.5(b) and (d), 3507.1(c), 71632.5(c), 71636.3, and 71814(c) Government Code.